IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRI. APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1324 OF 2005

Shri V.P.Shetty,
Chairman of Industrial Development
bank of India Ltd., having its
registered office at IDBI Tower,
Cuffe Parade, Colaba, Mumbai-5. ... Petitioner

V/s

1. Sr. Inspector of Police,
   Cuffe Parade Police Station,
   Colaba, Mumbai - 400 005.

2. State of Maharashtra. ... Respondents

Mr. Satish Maneshinde with Subodh Desai for the petitioner.

Mr. D.S. Mhaispurkar, A.P.P. for the Resp.Nos. 1 & 2.

Mr. Parvez Memmon for the original complainant.

CORAM: R.M.S. KHANDEPARKAR &
P.V. KAKADE, JJ.

DATED: 6TH MAY, 2005

ORAL JUDGMENT (Per Khandeparkar, J.):

1. Heard learned advocate for the petitioner and the learned A.P.P. for the respondents.

2. Rule. By consent, the rule is made returnable forthwith.

3. Apart from the learned advocate appearing for the petitioner and the learned A.P.P. for the respondents, we have also heard the learned advocate for the complainant in the matter.

4. The petitioner challenges the F.I.R. No. 133 of 2005 recorded on 30.4.2005 at Cuffe Parade Police Station, Mumbai. The grievance of the petitioner is that, inspite of the fact that the complaint lodged by the complainant nowhere discloses any offence punishable under Sec. 3(1)(x) of the Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "the Atrocities Act"), the police have registered the said F.I.R. against the petitioner under the said provisions of the Atrocities Act. The learned advocate appearing for the petitioner, while taking us through the complaint as well as placing reliance in the decision in matter of **Bai @ Laxmibai w/o Nivratti Poul & ors. v/s The State of Maharashtra, reported in 2001 ALL MR (Cri) 219,** submitted that the complaint nowhere discloses any insult or humiliation caused to the complainant in a place within the public view and, therefore, there was no justification to register the

F.I.R. alleging the offence having been committed by the petitioner punishable under Sec. 3(1)(x) of the Atrocities Act. The learned A.P.P., on the other hand, submitted that the statement made in the complaint apparently discloses insult to the complainant on account of he being belonging to the Schedule Caste and further that even the provisions of Sec. 3(1)(d) of the Protection of Civil Rights Act, 1955 (hereinafter referred to as the "Civil Act") are clearly attracted and considering the provisions of Sec. 15 of the Civil Act, the police are entitled to take cognizance of such offence and investigate into the matter. The learned advocate for the complainant submitted that though at the time the Atrocities Act was brought into force, it required the acts on the part of the accused to have been committed within the public view, taking into consideration the changed scenerio and the attempts being made by the people belonging to the upper caste and community to abuse the members of the Schedule Castes and Schedule Tribes in the private places, the provision comprising under Sec.3(1)(x) has to be harmoniously construed and the expression "public view" appearing in the said provision of law cannot be understood to have a restricted meaning. According to

the learned advocate, considering the same, even the premises where the complainant was abused by the petitioner should be construed as the place "within the public view".

5. The plain reading of the complaint filed by the complainant undoubtedly prima facie discloses various accusations against the complainant by the petitioner in the name of the Schedule Castes and Schedule Tribes. It also prima facie discloses abuses having been uttered by the petitioner and addressed to the complainant on the ground of the complainant being a member of the Schedule Caste. However, as rightly submitted by the learned advocate for the petitioner, the complaint nowhere discloses those accusations having been made in a place within the public view. In various decisions apart from the decision of **Bai @ Laxmibai,** this Court has time and again held that the expression "within public view" has specific meaning and in order to attract the provisions of law under Sec. 3(1)(x) of the Atrocities Act, the acts amounting to insult or humiliation to the member of Schedule Castes or Schedule Tribes should be visible and audible to the public. Otherwise, it would not amount to an offence under the said provision of law.

Considering the same and considering the allegations in the complaint which relate to the acts by the petitioner in the closed cabin of the petitioner and in the absence of any stranger, can hardly be said to be accusations by the petitioner to the complainant "within the public view". On this count itself, the petitioner is justified in contending that there was no case for recording the F.I.R. under the provisions of law comprised under Sec. 3(1)(x) of the Atrocities Act.

6. The contention of the learned advocate for the complainant regarding the interpretation to be given to the expression "within public view" cannot be accepted. In fact, to construe the said expression in the manner the learned advocate for the complainant wants us to construe, the same would virtually amount to legislate upon the said provision in the statute and that is beyond the scope of the powers of the Court. That falls entirely within the domain of the legislature. Being so, the contention on behalf of the complainant in that regard is to be rejected.

7. The contention of the learned A.P.P. that the facts disclosed in the complaint may not warrant an action

under the provisions of Atrocities Act, nevertheless the same prima facie disclose the offence punishable under Sec. 7(1)(d) of the Civil Act, needs due consideration. Various statements of the petitioner which have been quoted in the complaint by the complainant undoubtedly prima facie disclose an attempt to insult the complainant on the ground of untouchability, he being a member of the Schedule Caste. Being so, even though the complaint may not disclose the offence punishable under the Atrocities Act, certainly prima facie it discloses an offence punishable under Sec. 7(1)(d) of the Civil Act. The learned advocate for the petitioner in that regard sought to draw our attention to various documents and facts borne out from those documents. However, it is now well settled that, while considering the challenge to the F.I.R., the Court has to consider the contents of the F.I.R. itself and accused is not entitled to call upon the Court to rely upon any additional material. That exercise can be done at the time of the trial in case the chargesheet is filed and if the petitioner is invited to face the trial. But it is too premature for this Court to consider any extraneous method at this stage.

8. It is also sought to be contended on behalf of the petitioner that there is no F.I.R. registered under the provisions of 7(1)(d) of the Civil Act. Undoubtedly, the F.I.R. does not disclose incorporation of the said provision of law. However, the provisions of Sec. 154 of the Cr.P.C. are very clear. Once the police authorities are informed about the commission of any cognizable offence, it becomes their duty to record the substance of the information and to take appropriate steps for investigation into the matter. Undoubtedly, Sec. 15 of the Civil Act discloses that offences punishable under Civil Act are cognizable. Being so, once a complaint is lodged disclosing the facts revealing the offence punishable under the provisions of law comprised in Civil Act and that being the cognizable offence, merely because the provision of law under the Civil Act is not mentioned in the F.I.R. that would not be the justification to quash the F.I.R. nor it can prohibit the investigating agency from performing their obligation under the statutory provisions.

9. In the result, therefore, though the petition is to be allowed for the purpose of quashing of the F.I.R. registered under Sec. 3(1)(x) of the Atrocities Act,

the same F.I.R. as far as it discloses the offence punishable under Sec. 7(1)(d) of the Civil Act, does not require any interference in writ jurisdiction.

10. In the result, therefore, the petition partly succeeds. The F.I.R. No. 133 of 2005 lodged at Cuffe Parade Police Station, Mumbai, is hereby quashed to the extent it relates to the offence punishable under Sec. 3(1)(x) of the Atrocities Act. The said F.I.R. is not interfered with to the extent it discloses to the offence under Sec. 7(1)(d) of the Civil Act. Rule is made absolute accordingly with no order as to costs.

(R.M.S. Khandeparkar, J.)

(P. V. Kakade, J.)